

Enrolled Senate Bill 571

Sponsored by Senators AVAKIAN, BURDICK, BATES, DEVLIN, Representatives ROSENBAUM, TOMEI; Senators COURTNEY, GORDLY, METSGER, MONNES ANDERSON, MONROE, MORRISETTE, PROZANSKI, WALKER, Representatives GELSER, GREENLICK, NATHANSON

CHAPTER

AN ACT

Relating to smoking; creating new provisions; amending ORS 192.660, 433.835, 433.840, 433.845, 433.850, 433.855, 433.870, 433.990, 441.030, 441.815 and 441.990; repealing ORS 433.863 and 433.865; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 433.835 is amended to read:

433.835. As used in ORS 433.835 to 433.875:

(1) "Cigar bar" means a business that:

- (a) Has on-site sales of cigars as defined in ORS 323.500;**
- (b) Has a humidor on the premises;**

(c) Allows the smoking of cigars on the premises but prohibits the smoking of all other tobacco products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010 and cigarillos as defined by the Department of Human Services by rule;

(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;

(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;

(f) Does not offer video lottery games as authorized under ORS 461.217;

(g) Has a maximum seating capacity of 40 persons;

(h) Has a ventilation system that is certified by the assistant to the State Fire Marshal described in ORS 476.060 for the jurisdiction in which the cigar bar is located as adequate to remove the cigar smoke in the cigar bar and vents the smoke from the cigar bar in a manner that prevents the smoke from entering any other establishment; and

(i) Requires all employees to read and sign a document that explains the dangers of exposure to secondhand smoke.

[(1)] **(2) "Enclosed area" means all space between a floor and a ceiling that is enclosed on [all] three or more sides by [solid] permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling, including all space therein screened by partitions that do not extend to the ceiling.**

[(2)] **(3) "Place of employment" means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, vehicles that are operated in the course of an employer's**

business that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, [and] hallways, **meeting rooms, elevators and stairways**. “Place of employment” does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250[,] or a facility providing adult day care as defined in ORS 410.490 [or a health care facility as defined in ORS 442.015].

[3] (4) “Public place” means any enclosed [indoor] area open to [and frequented by] the public[, except those public places subject to ORS 441.815, including but not limited to restaurants, as defined in ORS 624.010, retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms and grocery stores].

(5) **“Smoke shop” means a business that:**

(a) **Is primarily engaged in the sale of tobacco products and smoking instruments, with at least 75 percent of the gross revenues of the business resulting from such sales;**

(b) **Prohibits persons under 18 years of age from entering the premises;**

(c) **Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting on the premises;**

(d) **Does not sell or offer on-premises consumption of alcoholic beverages; and**

(e) **Is a stand-alone business with no other businesses or residential property attached to the premises.**

[4] (6) “Smoking instrument” means any cigar, cigarette, pipe or other smoking equipment.

SECTION 2. ORS 433.840 is amended to read:

433.840. The people of Oregon find that because [the smoking of tobacco creates a health hazard to those present in confined places,] **exposure to secondhand smoke is known to cause cancer and other chronic diseases such as heart disease, asthma and bronchitis**, it is necessary to reduce exposure to tobacco smoke by [requiring nonsmoking areas in certain] **prohibiting smoking in all public places and places of employment.**

SECTION 3. ORS 433.845 is amended to read:

433.845. (1) [No] **A person [shall] may not** smoke or carry any lighted smoking instrument in a public place **or place of employment** except in areas designated as smoking areas pursuant to ORS 433.850.

(2) **A person may not smoke or carry any lighted smoking instrument within 10 feet of the following parts of public places or places of employment:**

(a) **Entrances;**

(b) **Exits;**

(c) **Windows that open; and**

(d) **Ventilation intakes that serve an enclosed area.**

(3) [Smoking is prohibited] **A person may not smoke or carry any lighted smoking instrument** in a room during the time that jurors are required to use the room.

SECTION 4. ORS 433.850 is amended to read:

433.850. (1) [Except as provided in subsection (2) of this section,] An employer shall provide a place of employment that is free of tobacco smoke for all employees.

(2) [The following areas are not subject to the smoking restrictions in] **Notwithstanding** subsection (1) of this section:

[a) Retail businesses primarily engaged in the sale of tobacco or tobacco products.]

[b) Restaurants posted as off-limits to minors or areas of restaurants posted as off-limits to minors under rules adopted by the Oregon Liquor Control Commission.]

[c) Bars or taverns posted as off-limits to minors under rules adopted by the Oregon Liquor Control Commission.]

[d) Rooms or halls being used by a charitable, fraternal or religious organization to conduct bingo games under a license issued pursuant to ORS 464.270.]

[e) Bowling centers.]

[f) Rooms designated by the owner or person in charge of a hotel or motel as rooms in which smoking is permitted.]

[(g) Employee lounges designated by an employer for smoking if:]

[(A) The lounge is not accessible to minors;]

[(B) The air in the lounge is exhausted directly to the outside by an exhaust fan and not recirculated to other parts of the building;]

[(C) The lounge is in compliance with ventilation standards established by rule by the Department of Human Services;]

[(D) The lounge is located in a nonwork area where no employee is required to enter as part of the employee's work responsibilities. For purposes of this paragraph, "work responsibilities" does not include custodial or maintenance work carried out in a lounge when it is unoccupied; and]

[(E) There are sufficient nonsmoking lounges to accommodate nonsmokers.]

(a) The owner or person in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which smoking is permitted.

(b) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.

(c) Smoking is permitted in a smoke shop.

(d) Smoking is permitted in a cigar bar that generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006.

(3) An employer, except in those places described in subsection (2) of this section, shall post *[appropriate]* signs **that provide notice of the provisions of ORS 433.835 to 433.875.**

SECTION 5. ORS 433.855 is amended to read:

433.855. (1) The Department of Human Services, in accordance with the provisions of ORS chapter 183:

(a) Shall adopt rules necessary to implement the provisions of ORS 433.835 to 433.875 and 433.990 (4);

(b) Shall be responsible for compliance with such rules; and

(c) May impose a civil penalty not to exceed the amount specified in ORS 433.990 (4) for each violation of a rule of the department applicable to ORS **433.845** or 433.850, to be collected in the manner provided in ORS 441.705 to 441.745. All penalties recovered shall be paid into the State Treasury and credited to the *[General Fund]* **Tobacco Use Reduction Account established under ORS 431.832.**

(2) In carrying out its duties under this section, the Department of Human Services is not authorized to require any changes in ventilation or barriers in any public place **or place of employment.** However, nothing in this subsection is intended to limit the authority of the department to impose any requirements under any other provision of law.

(3) In public places which the Department of Human Services regularly inspects, the Department of Human Services shall check for compliance with the provisions of ORS 433.835 to 433.875 and 433.990 (4). In other public places **and places of employment,** the Department of Human Services shall respond in writing or orally by telephone to complaints, notifying the proprietor or person in charge of responsibilities of the proprietor or person in charge under ORS 433.835 to 433.875 and 433.990 (4). If repeated complaints are received, the Department of Human Services may take appropriate action to *[insure]* **ensure** compliance.

(4) When a county has received delegation of the duties and responsibilities under ORS 446.425 and 448.100, or contracted with the Department of Human Services under ORS 190.110, the county shall be responsible for enforcing the provisions of ORS 433.835 to 433.875 and 433.990 (4) that are applicable to those licensed facilities and shall have the same authority as the Department of Human Services for such enforcement.

SECTION 6. ORS 433.870 is amended to read:

433.870. The *[regulations]* **rules** authorized by ORS 433.855[,] **and** 433.860 *[and 433.865]* are in addition to and not in lieu of any other law regulating smoking.

SECTION 7. ORS 433.990 is amended to read:

433.990. (1) Violation of ORS 433.004 or 433.008, 433.255, 433.260 or 433.715 is a Class A misdemeanor.

(2) Violation of ORS 433.010 is punishable, upon conviction, by imprisonment in the custody of the Department of Corrections for not more than three years.

(3) Violation of ORS 433.035 is punishable upon conviction by a fine of not less than \$10 nor more than \$100, or by imprisonment for not less than 10 days nor more than 30 days, or by both.

(4) Violation of ORS 433.850 is a Class [D] A violation punishable by [*finest totaling*] **a fine of not more than [\$50] \$500 per day[.]. Fines imposed against a single employer under this subsection may not [to] exceed [\$1,000] \$2,000** in any 30-day period.

(5) Violation of ORS 433.345 or 433.365 is a Class B violation. Failure to obey any lawful order of the Director of Human Services issued under ORS 433.350 is a Class C misdemeanor.

(6) Any organizer, as defined in ORS 433.735, violating ORS 433.745 is punishable, upon conviction, by a fine of not more than \$10,000.

SECTION 8. ORS 441.815 is amended to read:

441.815. [(1) *No hospital employee, patient or visitor shall smoke any cigar, cigarette or tobacco in any form in any:*]

[(a) *Room of the hospital in which more than one patient is accommodated, unless the room is specifically designated for smoking; or*]

[(b) *Other areas where patient care is provided in the hospital.*]

[(2) *The administrator or person in charge of a hospital shall designate reasonable areas in lobbies and waiting rooms where smoking is not permitted.*]

[(3) *The administrator or person in charge of the hospital shall designate a reasonable number of rooms in the hospital where smoking is not permitted.*]

[(4)] (1) As used in this section, "hospital" has the meaning given the term in ORS 442.015.

(2) The administrator or person in charge of a hospital may not permit a person to smoke tobacco:

(a) In the hospital; or

(b) Within 10 feet of a doorway, open window or ventilation intake of the hospital.

(3) The Director of Human Services may impose a civil penalty of not more than \$500 per day on a person for violation of subsection (2) of this section. Civil penalties imposed against a person under this subsection may not exceed \$2,000 in any 30-day period. Civil penalties imposed under this subsection shall be imposed in the manner provided by ORS 183.745.

(4) The Department of Human Services may adopt rules necessary for the administration of this section.

SECTION 9. ORS 441.990 is amended to read:

441.990. (1) Violation of ORS 441.015 (1) is a violation punishable, upon conviction, by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation. Each day of continuing violation after a first conviction shall be considered a subsequent violation.

[(2)(a) *Violation of ORS 441.815 (1) is a violation punishable by a fine of \$10.*]

[(b) *Violation of ORS 441.815 (2) or (3) is a Class D violation.*]

[(3)] (2) Any person who willfully prevents, interferes with, or attempts to impede in any way the work of any duly authorized representative of the Department of Human Services in the lawful carrying out of the provisions of ORS 441.087 (1) is guilty of a Class C misdemeanor.

[(4)] (3) The removal of the notice required by ORS 441.030 (5) by any person other than an official of the department is a Class C misdemeanor.

SECTION 10. ORS 441.030 is amended to read:

441.030. (1) The Department of Human Services, pursuant to ORS 479.215, shall deny, suspend or revoke a license in any case where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(2) The department may deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085, 441.087, 441.990 [(3)] (2) or the rules or minimum standards adopted under those statutes.

(3) The department may suspend or revoke a license issued under ORS 441.025 for failure to comply with a department order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087 and 441.990 [(3)] (2) or ORS 441.162 or 441.166, or the rules adopted thereunder, or for failure to pay a civil penalty imposed under ORS 441.170 or 441.710.

(4) The department may order a long term care facility licensed under ORS 441.025 to restrict the admission of patients when the department finds an immediate threat to patient health and safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to 441.063, 441.084 to 441.087 and the rules adopted pursuant thereto.

(5) Any long term care facility which has been ordered to restrict the admission of patients pursuant to subsection (4) of this section shall post a notice of such restriction, provided by the department, on all doors providing ingress to and egress from the facility, for the duration of the restriction.

SECTION 10a. If Senate Bill 84 becomes law, section 10 of this 2007 Act (amending ORS 441.030) is repealed.

SECTION 11. ORS 192.660 is amended to read:

192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 [(3)] (2) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

SECTION 12. ORS 433.863 and 433.865 are repealed.

SECTION 13. This 2007 Act takes effect on January 1, 2009.

Passed by Senate May 22, 2007

Repassed by Senate June 18, 2007

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Secretary of Senate

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President of Senate

Passed by House June 15, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

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Secretary of State